



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
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STEVE WESTLY
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STEVE PEACE
Member

January 31, 2003 Franchise Tax Board Litigation Roster

All cases currently active and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list is also provided of new cases that have been added to the roster for the month as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: www.ftb.ca.gov/legal/Lit_roster.pdf

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX

CLOSED CASES – JANUARY 2003

Case Name

Court Number

NONE

FRANCHISE AND INCOME TAX

NEW CASES – JANUARY 2003

Case Name

Court Number

Montgomery Ward LLC

San Diego Superior Court No. GIC802767

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

JANUARY 2003

AMDAHL CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No. 321296

Filed – 05/14/01

Appellate Court 1st District Court No. A0101101

Taxpayer's Counsel

FTB's Counsel

Timothy K. Roake

Kristian Whitten

Fenwick & West LLP

- Issues
1. Whether Section 25106 was properly applied to the facts of this case in a manner which does not discriminate against foreign commerce.
 2. Whether Section 24411 was properly applied in this case.
 3. Whether Section 24411 discriminates against foreign commerce.
 4. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is a dividend for purposes of Sections 24411 and 25106 of the Revenue and Taxation Code.
 5. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is gross income.

Years 1988, 1989, 1991 and 1992 Amount \$2,935,439.00

Status **Defendant/Appellant's Stipulated Motion to Augment the Record filed on January 9, 2003. Defendant/Appellant's Cases Screening Form filed by mail to all parties on January 13, 2003.**

DAVIS, CRYSTAL TIFFANY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC261559

Filed – 11/09/01

Taxpayer's Counsel

FTB's Counsel

Martin N. Segal, Esq.

Elisa B. Wolfe

Issue Whether a portion of an amount received in the settlement of a lawsuit was properly characterized as punitive damages and included in taxable income.

Year 1991 Amount \$5,038.00

Status **Minute Order, Final Status Conference and Court Trial are placed off calendar on January 27, 2003.**

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board

Sacramento Superior Court Docket No. 511821

Filed - 12/20/89

Court of Appeal, 3rd Appellate District, No. 3-CV-C020733

Taxpayer's Counsel

FTB's Counsel

Joanne Garvey, & Teresa Maloney

John D. Schell

Heller, Ehrman, White & McAuliffe

Issue Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.

Years 1980 through 1985 Amount \$1,137,006.98

Status Waiting for Court of Appeal to set date for Oral Argument.

FARMER BROS. CO. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC237663

Filed – 09/29/00

Court of Appeal, 2nd Appellate District Court No. 160061

Taxpayer's Counsel

FTB's Counsel

Robin C. Campbell, Esq.

Dean Freeman

Anglin, Flewelling, Rasmussen, Campbell & Trytten, LLP

Issue Whether Section 24402 of the Revenue and Taxation Code is unconstitutional under the United States Constitution.

Years 06/30/92 through 6/30/98 Amount \$814,705.00

Status **Plaintiff/Respondent's Opening Brief filed by mail on January 27, 2003.**

FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC-02-404182

Filed – 02/06/02

Taxpayer's Counsel

FTB's Counsel

John E. Cassinat & Ronald L. Carello

Marguerite Stricklin

Cassinat Law Corporation

Issues

1. Whether Plaintiffs' "horse breeding and racing business expenses" were deductible as business expenses in the years involved.
2. Whether expenses incurred by plaintiffs in horse breeding and racing activities were deductible as business expenses in the years involved.

Years 1991 through 1994 Amount \$149,696.00

Status Trial commenced on December 30, 2002, and continued to February 24, 2003.

FREYERMUTH, JANINE v. Franchise Tax Board

San Francisco Superior Court Docket No. 308985

Filed – 01/04/00

Taxpayer's Counsel

FTB's Counsel

Janine Freyermuth, In Pro Per

Randall P. Borcharding

Issue Whether the taxpayer was a resident of California.

Years 1986 and 1987 Amount \$47,471.00

Status Order to Show Cause Re: Dismissal (CRC225).

FREYERMUTH, REED v. Franchise Tax Board

San Francisco Superior Court Docket No. 308973

Taxpayer's Counsel

Joel K. Belway, Esq.

Filed – 01/04/00

FTB's Counsel**Randall P. Borcharding**

Issue Whether the taxpayer was a resident of California.

Years 1986 and 1987 Amount \$47,471.00

Status Notice of Bankruptcy of Reed Freyermuth served by mail on December 6, 2002.

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404

Taxpayer's Counsel

Charles R. Ajalat

Law Office of Ajalat, Polley & Ayoob

Filed – 03/06/02

FTB's Counsel

Stephen Lew, Donald

Currier & Joseph O'Heron

Issues

1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
2. Whether interest income was properly characterized as business income.
3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
5. Whether various receipts from intangible assets were properly excluded from the sales factor.
6. Whether research tax credits were properly limited to the entity incurring the expense.
7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years 1986 through 1988 Amount \$10,692,755.00

Status Discovery proceeding.
Hearing held on December 20, 2002, on Motion and Cross-Motion for Summary Adjudication; Tentative Order Denying GM's Motion as to Issues 1, 6 and 7, granting Motion as to Issues 3, and 4, and Granting FTB's Cross-Motion as to Issues 6 and 7. Trial scheduled for March 5, 2003.

Felix Leatherwood

Status **Hearing held; Demurrer was overruled on January 7, 2003. Answer to the Complaint filed on January 27, 2003.**

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board

Alameda Superior Court Docket No. 837723-0

Filed – 04/09/01

Taxpayer's Counsel

Amy L. Silverstein, Anthony P. Canini and

Andres Vallejo

Morrison & Foerster, LLP

FTB's Counsel

Joyce Hee

- Issues
1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
 2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

Years 1993 and 1994 Amount \$2,185,718.00

Status Discovery proceeding. Parties Stipulated on November 27, 2002, to Motion for Summary Judgment hearing continuance to February 4, 2003. Plaintiffs' Reply to Defendant's Opposition to Motion for Summary Judgment.

Longbrook, Michael G. & Barbara J. v. Franchise Tax Board

Los Angeles Superior Court Docket No. 02K21208

Filed – 11/18/02

Taxpayer's Counsel

Michael G. & Barbara J. Longbrook, In Pro Per

FTB's Counsel

Elisa Wolfe

Issue Whether the frivolous return penalty provided by § 19179 has been properly assessed.

Years 1997 and 1998 Amount \$1,000.00 Penalty

Status **Plaintiffs' Request for Entry of Default mailed to the court on January 7, 2003.**

Marken, Donald W. & Claudine H v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520

Filed - 04/05/99

Court of Appeal, 1st Appellate Dist. No. A091644

California Supreme Court No. S 104529

Taxpayer's Counsel

William E. Taggart, Jr.

Taggart & Hawkins

FTB's Counsel

Marguerite Stricklin

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount \$244,012.00

Status California Supreme Court denied Defendant/Appellant's Request for Publication on May 1, 2002. Parties considering going to trial.

MARRO, DONALD C. AND LILLIAN S. CLANCY v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 02-414788 Filed – 11/18/02

Taxpayer's Counsel

Donald C. Marro, In Pro Per

FTB's Counsel

Kristian Whitten

Issue Whether assessments based on federal adjustments were timely made.

Years 1993 and 1994 Amount \$9,267.00

Status **Plaintiffs' First Amended Complaint served personally on DAG on January 21, 2003.**

MARTIN, SCOTT R. v. Franchise Tax Board

US Dist. Ct, Northern District of California Case No. C02-05446

Filed – 11/18/02

Taxpayer's Counsel

Scott R. Martin, In Pro Per

FTB's Counsel

Anne Michelle Burr

Issue Whether 46 USC § 11108 AND 11109 exempts the income of a merchant seaman from taxation.

Year 1999 Amount \$9,399.00

Status **Memorandum of Points and Authorities in Support of Motion to Dismiss sent by mail on January 23, 2003. Notice of Impending Reassignment to a United States District Court Judge filed on January 29, 2003. Defendant's Renotice of Motion and Motion to Dismiss sent by mail on January 31, 2003.**

MCMENAMIN, JAMES & KATHRYN v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC223616

Filed – 01/25/00

Taxpayer's Counsel

Kathryn McMenamin-Torres

Callero & McMenamin-Torres

FTB's Counsel

Thomas Heller

- Issues
1. Whether the plaintiffs were residents of California during the subject years.
 2. Whether the consideration of certain facts in making a determination of residency was constitutional.
 3. Whether the amount of net operating loss claimed on a 1989 nonresident return was properly calculated.
 4. Whether dividend income from a particular investment fund was exempt from California taxation.
 5. Whether a negligence penalty was properly imposed.
 6. Whether a failure to furnish information penalty was properly imposed.
 7. Whether interest should be abated on any deficiencies which may exist.
 8. Whether plaintiffs are entitled to attorney's fees.

Years 1986 through 1989 Amount \$99,663.00 Tax
\$69,383.55 Penalty

Status **Minute Order – Tentative Decision in favor of Plaintiffs on January 21, 2003.**

MICROSOFT Corporation v. Franchise Tax Board

San Francisco Superior Court Docket No. 400444

Taxpayer's Counsel

James P. Kleier, Esq.

Preston Gates & Ellis, LLP

Filed – 10/19/01

FTB's Counsel

Julian O. Standen

Issues 1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.
3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

Year 1991 Amount \$1,879,809.00

Status Discovery continuing. Trial continued to February 24, 2003.

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC772282

Taxpayer's Counsel

Steve Mather.

Kajan, Mather and Barish

Filed – 08/27/01

FTB's Counsel

Leslie Branman-Smith

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$227,246.00

Status Trial scheduled for February 21, 2003. **Defendant's Opposition to Plaintiffs' Statement of Undisputed Facts filed on January 10, 2003. Hearing on Cross-Motion for Summary Judgment and Writ to Enforce Settlement filed on January 31, 2003.**

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC773381

Taxpayer's Counsel

Steve Mather.

Kajan, Mather and Barish

Filed – 08/27/01

FTB's Counsel

Leslie Branman-Smith

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$670,825.00

Status Trial scheduled for February 21, 2003. **Defendant's Opposition to Plaintiffs' Statement of Undisputed Facts filed on January 10, 2003. Hearing on Cross-Motion for Summary Judgment and Writ to Enforce Settlement filed on January 31, 2003.**

MONTGOMERY WARD LLC v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Taxpayer's Counsel

Charles J. Moll III, Edwin P. Antolin, Pilar M. Sansone
Morrison & Foerster LLP

Filed – 12/30/02

FTB's Counsel

Gregory Price

Issues 1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years 1989 through 1994 Amount \$2,694,192.00

Status **Summons and Complaint served personally on the Franchise Tax Board on January 2, 2003.**

NOBLE, HOMER E. AND STEPHANIE F. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC273634

Taxpayer's Counsel

Richard W. Craigo

Filed - 05/09/02

FTB's Counsel

Anthony Sgherzi

Issue The issue is on what date during 1994 did plaintiffs cease to be residents and domiciliaries of California?

Year 1994 Amount \$151,632.00

Status Discovery proceeding. **Trial scheduled for February 19, 2003.**

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386

Taxpayer's Counsel

Richard C. Field

Bingham McCutchen LLP

Filed – 07/25/02

FTB's Counsel

David Bornstein

Issue Whether the tax involved was timely assessed.

Year 1983 Amount \$12,350.00

Status Notice of Motion and Motion of Defendant for Summary Judgment filed on December 31, 2002.

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 319008

Taxpayer's Counsel

Allan L. Schare

McDermott, Will & Emery

Filed – 02/20/01

FTB's Counsel

David Lew

Anne M. Burr

Issue What is the proper amount of depreciation deduction with respect to property acquired from former unitary affiliates?

Years 1987 through 1990 Amount \$9,960,422.00

Status **Trial commenced on January 13, 2003.**

PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board

San Francisco Superior Court Docket No. 324518

Taxpayer's Counsel

Edward Winslow

Layman, Lempert & Winslow

Filed – 09/13/01

FTB's Counsel

Marguerite Stricklin

Issues 1. Whether the plaintiffs became residents of California on April 10, 1990.
2. Whether "guaranteed payments" received by plaintiffs while residents of California from a partnership could be included in the income taxed by California.

Years 1990, 1996 through 1999 Amount \$144,278.00

Status **Tentative Decision in favor of Plaintiffs filed on January 23, 2003.**

PERUCCI, OTTO A. & RUTH V. v. Franchise Tax Board

San Francisco Superior Court Docket No. 311405

Court of Appeal, 1st Appellate District Div. 5 No. A 097846Taxpayer's Counsel

Harry Gordon Oliver, Esq.

Law Offices of Harry Gordon Oliver

Filed – 04/11/00

FTB's Counsel**Randall P. Borcharding**

Issue Whether gain realized on the 1986 sale of stock that was reported in 1995 was eligible for treatment as gain from the sale of small business stock.

Year 1995 Amount \$17,050.00

Status Unpublished Decision of the Appellate Court in favor of Franchise Tax Board, reversing in full the judgment of the Superior Court in favor of Plaintiff/Appellant filed November 6, 2002.

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board

San Francisco Superior Court Docket No. 414931

Filed – 11/21/02

Taxpayer's Counsel

Jeffrey M. Vesely, Esq.

Richard E. Nielsen, Esq.

Pillsbury Winthrop, LLP

FTB's Counsel

David Lew

Issue Whether California definition of gross income incorporated amendments to the Internal Revenue Code dealing with losses of Alaska Native Corporation.

Years 1986 and 1987 Amount \$1,138,512.00

Status **Answer to the Complaint filed on January 23, 2003.**

RAUTENBERG, ERWIN v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC254725

Filed – 09/04/01

Court of Appeal, 2nd Appellate District Div. 4 No. B157513Taxpayer's Counsel

Willard D. Horwich

FTB's Counsel

Don Currier

Issue Whether a payment received from an S Corporation by its sole shareholder can be excluded from the individual's income as a non-taxable tort recovery.

Year 1994 Amount \$393,462.00

Status **Appellate Court Affirms Imposition of Income Tax in favor of Franchise Tax Board on January 28, 2003.**

ROBINSON, CHERISH F. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC261557

Filed – 11/09/01

Taxpayer's Counsel

Martin N. Segal, Esq.

FTB's Counsel

Elisa B. Wolfe

Issue Whether a portion of an amount received in the settlement of a lawsuit was properly characterized as punitive damages and included in taxable income.

Year 1991 Amount \$5,038.00

Status **Minute Order; Final Status Conference and Court Trial are placed off calendar on January 27, 2003.**

TIFFANY, ALEX A. & PATRICIA A. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC261558

Taxpayer's Counsel

Martin N. Segal, Esq.

Filed – 11/09/01

FTB's Counsel

Elisa B. Wolfe

Issue Whether a portion of an amount received in the settlement of a lawsuit was properly characterized as punitive damages and included in taxable income.

Year 1991 Amount \$6,953.00

Status **Minute Order; Final Status Conference and Court Trial are placed off calendar on January 27, 2003.**

TOY'S "R" Us v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316

Taxpayer's Counsel

Eric J. Coffill

Carley A. Roberts

Filed - 07/17/01

FTB's Counsel

Michael J. Cornez

Issue Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years 1991 through 1994 Amount \$5,342,122.00

Status **Trial postponed on January 22, 2003, and rescheduled to May 5, 2003.**

WEINGARTEN, SAUL M. v. Franchise Tax Board

San Francisco Superior Court Docket No. 996766

Taxpayer's Counsel

Saul M. Weingarten

Saul M. Weingarten & Associates

Filed - 7/28/98

FTB's Counsel

Marguerite Stricklin

Issues

1. Whether the Board of Equalization followed proper procedures in considering the taxpayer's appeal.
2. Whether taxpayer's real estate investments were subject to passive activity loss limitations.
3. Whether FTB properly calculated depreciation with respect to various properties.
4. Whether FTB properly calculated the sales price of a piece of property sold by the taxpayer.
5. Whether penalties were improperly imposed.

Years 1987 through 1989 Amount \$88,966.00 Tax
\$22,241.75 Penalty

Status Answer to Complaint filed October 27, 1998.

YOSHINOYA WEST, INC. v. Franchise Tax Board

Los Angeles Superior Court, Central District No. BC274343

Filed - 05/22/02

Taxpayer's CounselFTB's Counsel

Dwayne M. Horii

Donald R. Currier

William C. Choi

Rodriguez, Horii & Choi

- Issues
1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
 2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years 1986 and 1987 Amount \$1,741,534.00

Status Status Conference held on October 10, 2003; trial date continued to February 25, 2004.